

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA**

FY 2014 SHUTDOWN PLAN

Pursuant to Volume 13, Chapter 2, § 220.30 of the Guide to Judiciary Policy and the [Director's memorandum dated September 24, 2013](#), this court adopts the following plan for operating during a Judiciary shutdown. A Judiciary shutdown occurs after all funding derived from fees and no-year appropriations has been exhausted<sup>1</sup> and a continuing resolution or appropriations bill is not enacted.

1. Declaration of Policy. The policy of the United States District Court for the District of Nebraska is that essential judicial branch activities will continue. The activities set forth in this plan are essential, and the employees who perform these duties are deemed essential.<sup>2</sup>
  - (a) Because the spirit of the Anti-Deficiency Act requires a very narrow interpretation regarding the performance of other functions by judicial branch personnel during a shutdown period, the only work considered essential and thus permissible includes:

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<sup>1</sup>The Judiciary can continue operations with funding derived from all possible sources of fees and no-year appropriations as previously authorized by the Executive Committee of the Judicial Conference. On September 24, 2013, the AO estimated those funding sources would be available to continue operations for approximately ten business days. During this period, efforts should be made to implement an orderly shutdown to take effect after these funding sources are exhausted. An orderly shutdown is defined as having sufficient opportunity to protect and secure court property, typically of a three-hour or less duration. It is **not** defined as having sufficient opportunity to complete assigned tasks, projects, etc. If a shutdown occurs and employees are furloughed, all work of those employees ceases, court property is protected and secured, and employees are released.

<sup>2</sup> The AO's Office of General Counsel has issued an opinion that the salaries of Article III, bankruptcy, and magistrate judges would be payable notwithstanding a lapse in appropriations. The Judiciary would need to seek authorization from the Secretary of the Treasury to continue to pay these judges' salaries during a government shutdown. The AO is confident that the Secretary of the Treasury would authorize such prompt payment for Article III judges. It is less certain whether the Secretary of the Treasury would authorize the prompt payment of non-Article III judges' salaries during a Judiciary shutdown. If that was not authorized, the non-Article III judges' salaries would be paid retroactively upon the enactment of the Judiciary's appropriation act. Retroactive payment of salaries for government employees who perform essential work will occur is expected to occur. It is unclear whether Congress would authorize such payments to employees who are furloughed.

- (1) activities necessary to support the exercise of the Article III judicial power, i.e., the resolution of cases in which there is a constitutional or statutory grant of jurisdiction;
  - (2) emergency activities necessary for the safety of human life and the protection of property; and
  - (3) activities otherwise authorized by law, either expressly or by necessary implication, including:
    - (A) items guaranteed by the Constitution (e.g., Article III judges' salaries);
    - (B) activities funded with available no-year appropriations (e.g., jury system and federal defender program);
    - (C) entitlement programs (e.g., Judicial Survivors Annuities System, which is partly funded by judges' salaries); and
    - (D) minimal activities needed for an orderly shutdown of other official functions.
- (b) This court will continue to 1) hear and decide cases without interruption; 2) timely file and process all filings, motions, orders, emergency applications, and other litigation documents; 3) collect and deposit fees and costs into the Treasury process; 4) accept and process new bankruptcy cases and adversary proceedings; and 5) handle new cases or maintain existing cases, as necessary to assist the court in implementing its orders and judgments.
- (c) Staff will not perform functions that are unrelated to essential activities and set forth in this plan (e.g., ancillary administrative tasks, non-essential training, and other similar activities). The court will furlough, i.e., place in a temporary non-pay status because of lack of funds, any employees who perform duties that are not authorized by this plan. If any employees are to be furloughed, they must first have sufficient opportunity to protect and secure court property.
- (1) Furloughed employees will not be paid unless Congress authorizes funding. After the shutdowns in 1995 and 1996, Congress enacted legislation specifically authorizing retroactive pay for both federal employees who worked in non-pay status as well as furloughed federal employees. However, there is no guarantee that the current Congress will authorize retroactive pay for furloughed federal employees in the event of a shutdown. Shutdown furloughs are not considered a break in service and are generally creditable for retaining benefits, except in long periods of absence.

- (2) A furlough does place the employee in a non-pay status, thus possibly impacting payment of premiums for certain benefits if a shutdown is prolonged. The fact sheet, ["Effects of Extended Leave Without Pay,"](#) may be to counsel employees about benefits and the impact of a furlough.
  - (3) Staff who are furloughed cannot work voluntarily or be required to work. Staff performing essential functions and working in a non-pay status should expect to be paid once appropriations are enacted. Congress will have to take affirmative action to authorize pay for staff who are furloughed.
  - (4) Employees may not take annual or sick leave instead of being furloughed because employees would still be in a pay status and funds would not be available for payment.
- (d) This court suspends all activities not authorized in this plan. These activities may include, but are not limited to, the following: 1) hiring employees and related pay actions; 2) purchasing equipment, supplies, and contractual services;<sup>3</sup> 3) entering into new contractual obligations; 4) performing non-essential administrative tasks; 5) compiling non-essential statistics; 6) training; and 7) travel.<sup>4</sup>
- (1) The suspension of such activities will be carried out in an orderly manner to ensure that all records and statistics are preserved and secured, and that resumption of full activities will begin without limits once funding is restored.

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<sup>3</sup>Even if a contract is currently in place, any actions that would result in further expenses under the contract will be curtailed unless they are clearly in support of designated essential activities. Further, payment on any goods and services acquired during a lapse in appropriations could have payment delayed until funds become available through another continuing resolution or an appropriation. The court's Contracting Officer (CO) will notify contractors prior to an appropriations lapse as directed by the Procurement Management Division.

<sup>4</sup>All court personnel will conclude their travel and return to their normal duty station prior to shutdown. Travel can continue if it is deemed absolutely necessary to the performance of essential work (e.g., case resolution activities) as described in section 1(a) of this plan. If the travel is not required for purposes of an orderly shutdown, or if the individual is not performing essential work on travel, then the travel should not occur if it would incur further expense to the government.

- (e) The court will advise the following individuals of the level of services required to maintain continuing operation of the court system:
  - (1) U.S. Marshal, District of Nebraska;
  - (2) Director, Federal Protective Service, Department of Homeland Security; and
  - (3) Director, Public Building Service, U.S. General Services Administration.

2. Bankruptcy Judges and Their Staffs.

- (a) Because bankruptcy judges' salaries are fixed by statute, they may not be furloughed without pay and therefore should continue to work full-time during an appropriation lapse. Each judge may employ staff, such as law clerks and judicial assistants, which this court finds essential to the resolution of cases.
- (b) Conferences, hearings, and trials will continue to be conducted, and new cases will be accepted. Each bankruptcy judge should, to the extent practical, hear arguments and issue orders and judgments in adversary proceedings, other controversies, or where essential to protect property. The judges will be sympathetic to requests for continuances or other motions necessitated by phase-down activities in other governmental agencies.
- (c) Although most judges will employ their full complement of supporting personnel to perform constitutionally mandated duties, staff will not be employed or assigned to work on ancillary projects, such as preparing materials for an article or speech, or to perform non-essential administrative tasks.

3. Clerk's Office.

- (a) This court finds that clerk's office staff who support the court in case-resolution activities are essential. These activities include, but are not limited to, the following: 1) ensuring the proper and timely processing of all filings, motions, orders, emergency applications, and other litigation documents; 2) collecting and depositing fees and costs into the Treasury; and 3) accepting and processing new bankruptcy cases and adversary proceedings.

- (b) The essential functions and employees performing these functions are listed below.
- (1) Administration and Oversight of Office's Statutory Duties
    - (A) Clerk
    - (B) Chief Deputy Clerk
  - (2) Court Recording
    - (A) Courtroom Deputies
    - (B) Relief Courtroom Deputies
  - (3) Intake, Cashiering, Courtroom Support, Docketing, Quality Control, Case Management, and Records Management
    - (A) Deputy-in-Charge
    - (B) Case Administrator Supervisor
    - (C) Data Quality Analyst
    - (D) Courtroom Deputies
    - (E) Relief Courtroom Deputies
    - (F) Case Administrators
- (c) This court finds that services needed to support the performance of essential duties for the judges, clerk's office will continue, and the shared services staff who perform these services are essential. The essential functions and employees performing these functions are listed below.
- (1) Information Technology: Maintenance and support of all systems needed to support essential functions.
    - (A) Information Technology Administrator
    - (B) Network Administrator
  - (2) Administrative Services: Performance of duties related to essential duties of judges and clerk's office staff.
    - (A) Budget Analyst
    - (B) Procurement & Facilities Specialist
  - (3) Human Resources. Performance of duties related to essential duties of judges and clerk's office staff.
    - (A) Chief Deputy Clerk
    - (B) Clerk

- (d) The clerk and chief deputy clerk will determine the limited number of employees needed to perform essential functions 24 hours prior to an anticipated appropriations lapse, based on the court's schedule and essential work demand. All employees will be on call. Employees who are not required to report will be furloughed. The clerk and chief deputy clerk may move employees on or off the essential list based on changing circumstances in the court and the length of the appropriations lapse.

### REVISION CONTROL LOG

<b>Date</b>	<b>Comments</b>	<b>By</b>
09/25/2013	Drafted and approved.	DZ/ER
09/25/2013	Plan approved by Chief Bankruptcy Judge	TLS